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LEE & HAYES, PLLC 601 W. RIVERSIDE AVENUE SUITE 1400 SPOKANE, WA 99201				CZEKAJ, DAVID J
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* GARY J. SULLIVAN

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Appeal 2008-4848  
Application 09/839,679  
Technology Center 2600

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Decided:<sup>1</sup> April 17, 2009

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Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO  
and JOHN A. JEFFERY, *Administrative Patent Judges*.  
HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. §§ 6(b) and 134 from the final  
rejection of claims 1 to 25.

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper deliver) or Notification Date (electronic delivery).

We will reverse the non-statutory subject matter rejection of claims 10 and 11, and reverse the obviousness rejection of claims 1 to 25.

Appellant has invented a method and a system for receiving a command from a decoder application at an application program interface (API). The API is configured to facilitate the use of a plurality of different multimedia accelerators with the decoder application by generating one or more filter control command data structures recognizable by a communicatively coupled accelerator. The filter control command data structure includes one or more parameters which, when received by the accelerator, affects one or more filter settings of the accelerator based, at least in part, on the content of the received command (Fig. 2; Spec. 3, 12, 15, 23, 52, 62, and 70).

Claim 1 is representative of the claimed invention, and it reads as follows:

1. A method comprising:

receiving a command from a decoder application at an application program interface (API), wherein the API is configured to facilitate the use of a plurality of different multimedia accelerators with the decoder application; and

generating one or more filter control command data structures, recognizable by a communicatively coupled accelerator including one or more parameters which, when received by the accelerator, affects one or more filter settings of the accelerator based, at least in part, on the content of the received command.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Sriram US 6,539,059 B1 Mar. 25, 2003  
(filed Mar. 2, 2000)

MacInnis US 6,744,472 B1 Jun. 1, 2004  
(filed Nov. 9, 1999)

The Examiner rejected claims 10 and 11 under 35 U.S.C. § 101 for being directed to non-statutory subject matter.

The Examiner rejected claims 1 to 25 under 35 U.S.C. § 103(a) based upon the teachings of MacInnis and Sriram.

The Examiner contends that claims 10 and 11 are rejected because “the claims do not meet the 35 U.S.C. 101 requirements (the claims have improper language regarding the Computer-readable media)” (Ans. 3).

Appellant argues (App. Br. 6 and 7) that the Examiner has not provided an explanation or justification for the rejection.

Turning to the obviousness rejection, the Examiner contends (Ans. 3 and 4) that the teaching of receiving a command from a decoder application in the integrated circuit graphics system as in MacInnis and the teaching of using a plurality of different multimedia accelerators with a decoding application as in Sriram when combined “would have rendered obvious to one having ordinary skill in the art at the time the invention was made to implement an API configuration taught by Sriram in order to obtain an apparatus that is more versatile by being able to correctly and effectively facilitate the use between multiple processors of a system.” Appellant argues that:

[T]he Office's reliance on the Graphics Accelerator 64 in MacInnis is misplaced because nothing indicates "...one or more parameters which, when received by the accelerator, affects one or more filter settings of the accelerator *based, at least in part, on the content of the received command.*" (emphasis added). Indeed, the only commands that are received by the accelerator in MacInnis appear to be commands it receives directly from a CPU (see Fig. 37 and Column 57 (lines 46-47). As such, Applicant is left without any explanation as to how the Graphics Accelerator 64 in MacInnis is relevant to the claimed subject matter.

In addition, the *integrated* circuit system of MacInnis simply does not inherently disclose an application interface (API) that would be necessary for it to correctly operate, as the Office contends. In this regard, Sriram does not disclose or suggest an API that is configured to "facilitate the use of a plurality of different multimedia accelerators with the decoder application" as claimed.

(App. Br. 9 and 10)

## ISSUES

### *Non-statutory subject matter*

Has Appellant demonstrated that the Examiner erred by not presenting an explanation or justification for the rejection?

### *Obviousness*

Has Appellant demonstrated that the Examiner erred by finding that the combined teachings of the applied references would render obvious claims 1 to 25?

## FINDINGS OF FACT

1. The claimed method and system receives a command from a decoder application at an API that in turn generates a data structure which when received by a communicatively coupled accelerator affects one or more filter settings of the accelerator (Fig. 2; Spec. 70).

2. MacInnis describes a graphics integrated circuit chip 10 that includes a video decoder 50 and a graphics accelerator 64 for processing audio and video input signals 34 and 14, respectively (Figs. 1 and 2; Abstract; col. 3, ll. 40 to 46; col. 4, ll. 11 to 16).

3. The graphics accelerator 64 used by MacInnis is programmable and performs graphics processing operations that require intensive CPU processing (e.g., “3D effects such as real-time video warping and flipping, texture mapping, and Gouraud and Phong polygon shading, as well as 2D and image effects such as blending, scaling, blitting and filling) (col. 5, ll. 61 to 64; col. 57, ll. 26 to 35). The graphics accelerator is under the control of CPU 22 (Figs. 1 and 37; col. 57, ll. 46 to 48).

4. Sriram describes a method of decoding a Motion Compensated-Discrete Cosine Transform (MC-DCT) video stream via video decoder 26A to 26N (Fig. 1; Abstract; col. 4, ll. 21 to 30). A monitor processor 40 splits the MC-DCT video stream into a set of video streams for parallel processing of the set of video streams by sub-processors 42A to 42N (col. 4, ll. 43 to 53).

## PRINCIPLES OF LAW

### *Non-statutory subject matter*

The Examiner bears the initial burden of presenting a *prima facie* case, and, if the Examiner meets the initial burden, then the Appellant has the burden of presenting a rebuttal to the *prima facie* case. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

### *Obviousness*

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988).

The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

## ANALYSIS

### *Non-statutory subject matter*

As indicated *supra*, Appellant argues that the Examiner has not presented an explanation or justification for finding that claims 10 and 11 are directed to non-statutory subject matter under the provisions of 35 U.S.C. § 101. We agree with Appellant's argument. Although the Examiner refers us generally to the Interim Guidelines for Patent Subject Matter Eligibility (Ans. 3), the Examiner has not made any findings or presented any reasoning as to why claims 10 and 11 run afoul of the provisions of 35 U.S.C. § 101. Nor has the Examiner explained why the recited computer-readable media of claim 10 does not constitute a particular article of

manufacture, let alone explained why including such an article in a system as in claim 11 fails to constitute patentable subject matter under § 101. Merely alleging that “the claims have improper language regarding the [c]omputer-readable media” by generally referencing guidelines and suggesting language to the Appellant to overcome the purported deficiencies (Ans. 3) falls well short of the requisite analysis needed to establish a *prima facie* case of unpatentability under § 101. Accordingly, the non-statutory subject matter rejection of claims 10 and 11 is reversed for failure of the Examiner to meet the initial burden of informing the Appellant of a reason for rejecting the claims. *Oetiker*, 977 F.2d at 1445.

#### *Obviousness*

The reference to MacInnis describes a graphics integrated circuit chip 10 that includes a video decoder 50 and a graphics accelerator 64 for processing audio and video input signals 34 and 14, respectively (FF 2). The graphics accelerator used by MacInnis is programmable and performs intensive graphics processing operations (e.g., 3D effects such as real-time video warping and flipping, texture mapping, as well as 2D and image effects such as blending, scaling, blitting, and filling) (FF 3).

We agree with the Appellant’s argument (App. Br. 9 and 10) that the graphics accelerator in MacInnis is under the control of the CPU 22 (FF 3), and not an API that generates one or more parameters which, when received by the accelerator, affects one or more filter settings of the accelerator “*based, at least in part, on the content of the received command*” from the decoder application as set forth in the claims on appeal. With respect to the Examiner’s contention (Ans. 4) that Sriram describes the use of a plurality of

different multimedia accelerators, we find that Sriram merely describes a plurality of sub-processors 42A to 42N for parallel processing of a set of video streams during a video decoding operation (FF 4). In summary, we find that the Examiner has not set forth a factual basis to support a legal conclusion of obviousness. *Fine*, 837 F.2d at 1073. The Examiner's articulated reasoning in the rejection does not possess a rational underpinning to support a legal conclusion of obviousness. *See Kahn*, 441 F.3d at 988.

## CONCLUSIONS OF LAW

### *Non-statutory subject matter*

The Appellant has demonstrated that the Examiner erred by finding that claims 10 and 11 are directed to non-statutory subject matter.

### *Obviousness*

The Appellant has demonstrated that the Examiner erred by finding that the video decoding teachings of MacInnis and Sriram would render obvious claims 1 to 25.

## ORDER

The decision of the Examiner rejecting claims 10 and 11 under 35 U.S.C. § 101 is reversed.

Appeal 2008-4848  
Application 09/839,679

The decision of the Examiner rejecting claims 1 to 25 under 35 U.S.C. § 103(a) is reversed.

REVERSED

KIS

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